IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

LA.App..No. 877 of 2004(D)

LAR.29/1997 of SUB COURT, PATHANAMTHITTA
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APPELLANTS: CLAIMANTS:
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1. SUNIL M.THOMAS,
KOTTUPALLIL VEEDU, VETTIPRAM, PATHANAMTHITTA.

2. ANIL M.GEORGE,
KOTTUPALLIL VEEDU, VETTIPRAM, PATHANAMTHITTA.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS: RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR,
PATHANAMTHITTA.

2. PATHANAMTHITTA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, PATHANAMTHITTA.

R2 BY ADV. SRI.A.N.RAJAN BABU
V.K.SUNIL
R1 BY GOVERNMENT PLEADER

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A. No. 877 of 2004

Dated: November 14, 2007

JUDGMENT

Harun-Ul-Rashid, J.

The claimants in LAR No.29/19997 on the file of the Sub Court, Pathanamthitta are the appellants in this appeal. The court below originally tried this case along with three other cases and a common judgment and decree are passed. The properties in all the cases including LAR No.29/1997 was acquired for the purpose of construction of 'Subala Complex' and children's park in Pathanamthitta. The land acquisition officer fixed the land value for the wet land at Rs.1977/- per Are. Sec.4(1) notification was published on 20.2.1996. The extent acquired in LAR No.29/1997 is 23.25 Ares of wet land. The appellants/claimants contended that the acquired lands are situated within the Pathanamthitta municipality, that the property is having commercial importance due to its nearness to several government and other institutions, commercial establishments, District hospital, KSRTC bus-stand, other hospitals, banks etc.

2. The evidence in this case and the connected cases consists of oral evidence of AWs.1 to 5 and documentary evidence marked as Exts.A1 to A3, Exts.C1 to C3, R1 and R2. The court below examined Exts.A1 to A3 sale deeds and Ext.C2 report of the commissioner. The court below took the view that the properties covered by Exts.A1 to A3 are

not similar to the acquired land and therefore cannot be relied. Considering Ext.C2 commission report, the court below noted that the acquired lands are situated near to Pathanamthitta - Thonniamala - Kozhencherry public road and that the adjacent properties are being used for the purpose of construction of shopping complexes. The court below rejected the contention of the claimants that their land including the unacquired portion is facing a public road stating that the claimants could have produced their title deeds etc. to prove that aspect; having chosen not to produce those documents, their contention cannot be accepted. The court below, after taking into consideration the importance of the locality, its nearness to the public road, nearness to the District Headquarters etc., re-fixed the land value at Rs.15000/- per Are.

3. The appellants/claimants contended before us that the compensation awarded to them is less than the compensation awarded to the claimants in LAR No.56/1997 and connected cases which are also acquired by the very same notification and for the very same purpose. According to the counsel, the properties are situated in the same village and locality and that the properties owned by them is more important and valuable than the properties in LAR No.36/1997 and other connected cases. It is also contended by the appellants that taking into account the importance of the locality wherein the acquired land is situated, its commercial importance, the value fixed by the court below at the rate of Rs.15000/- per Are is a nominal enhancement and they are entitled to a

reasonable and fair land value to be fixed considering its importance. The appellants have also filed I.A.No.4260/2007 for appointing an advocate commissioner to conduct a site inspection of the properties covered by LAR No.36/1997 and the acquired properties for examining the relative importance of both lands. The court below shall consider and pass orders in IA No.4260/2007. In the facts and circumstances of the case and in the light of the contentions raised by the appellants/claimants, we are of the view that a fresh consideration of the matter is necessary in the interests of justice.

Accordingly, we set aside the judgment and decree under appeal and remand the case to the court below for fresh consideration. The parties are at liberty to adduce further evidence, if any. The court below shall dispose of the matter within a period of six months from the date of receipt of a copy of this judgment. The appellant is entitled to the refund of court fee paid.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-